

July 3, 2007

Paul Davis  
Director of Division of Water Control  
401 Church Street, 6<sup>th</sup> Floor L&C Annex  
Nashville, TN 37243-1534

VMJ 7/8  
→ MAJ 7/11  
PLEASE REMEMBER  
TO SCAN AND  
UPLOAD

Subject: Review Request

Director's Order No. 07-016D  
On Higher Ground Subdivision  
Sevier County, TN

FILE

Dear Mr. Davis:

I am sending this letter to secure a review of Director's Order and Assessment No. 07-016D. I will address my contentions by each violation listed in the Violations Section XXVII. I will also address the Order Section XXXII and then finish with my request for a hearing and/or settlement.

**Response to Violations:**

**XXVII:**

**Conducting operations without coverage under the TNCGP.**

This is referring to VII under the facts session. (Sept. 16, 2003).

**Response:**

Excavation started in February of 2003. The land being excavated to install a road is to be 1400' long and 22' wide representing 30,800 SF. The path cut in for this road was not more than double the 30,800 SF. As I understand the law on March 10, 2003 the laws changed from 5 acres down to 1 acre of disturbed land that are required to have coverage. At that time I understand this law states that coverage is not needed. I purchased the coverage after being notified anyways. I was approved coverage.

**XXXVIII:**

**(1) Failing to conduct EPSC inspections, (2) maintain reports of EPSC inspections (3) and failing to update the SWPPP as required by the TNCGP.**

**Response Part 1, 2:**

This is referring to XIV, and XXIII under the facts section for EPSC inspections and reporting. (5/11/2006; 12/18/2006)

I am at the site almost daily to monitor activities. I did not fail to conduct EPSC inspections however I was behind in my onsite record keeping of EPSC inspections. After alerting me to this oversight I updated the proper forms.

**Response Part 3:**

This is referring to XXIII under the facts section. (12/18/2006)

The SWPPP was updated in August, 2006 as requested by TDEC. It hasn't changed except for one pipe now connecting into another pipe before entering the pond. This

change occurred in early 2007. The SWPPP was changed to reflect this minor change. I submitted this in my June 20, 2007 letter to Mr. JanJic and Schmierbach.

**XXIX:**

**Violating terms of the ARAP GP for minor Road Crossings.**

**Response:**

The minor road crossing has been in place for some 20 years. It was not part of the ARAP Permit. Mr. Everett and Mr. Schmierbach are in agreement with this not being a violation based on our June 21, 2007 meeting.

**XXX:**

**Failing to properly install and maintain EPSC measures at a land disturbance activity, the activity was likely to cause an increase in the discharge of waste into the waters of the state.**

**XXXXI:**

**By causing a condition of pollution.**

**Response:**

I would like to start at the beginning for this one. When my SWPPP was developed and submitted by Vision Engineering in September, 2005 TDEC came back and asked for a couple additional things to be added. Vision added the changes and a SWPPP was submitted by Vision and approved by TDEC in January 2006. As time went on it became apparent the current SWPPP was not working. Part of the problem was that we had very little rain during the major excavation period in 2006 except for the occasional bursts of an 1" or more of rain in a short amount of time. Not only did that overrun some EPSC controls but would wash away the seeding that had been put down. On May 25, 2006 TDEC sent a letter and asked for me to come in for a compliance meeting and address the problems. We met and they told me what changes they wanted to see. I revised the SWPPP and made the changes with the exception of two additional silt fences I neglected to install. I have since installed those two fences. The two major things out of that meeting that needed to occur from an EPSC measures standpoint were to get the ground stabilized with vegetation and to create a large retention pond. The retention pond was created and stabilization was attempted. We Hydro-seeded on 4 different occasions and seeded and strawed many different areas many times with some success but failures too. The drought over the last year has either killed, washed away or never let germination take place. We aren't perfect, we have struggled with keeping up with some EPSC controls. Mother nature and not being able to hire someone to bring their bobcat over to clean out a check dam in a timely manner has made it difficult. But I can assure you it was never because of a lack of effort or we didn't care. If it wasn't for Mr. Everett giving us helpful suggestions to stabilize our site we wouldn't be as close as we are to getting this project complete. I am looking forward to paving with curbs the road within the next 4 weeks. I believe that will take care of most of our issues.

But the fact is we have a difficult site. We have an average 35% slope with it ending out in the unnamed tributary. This small stream flow is approximately 6 inches wide and 1/2" in height.

### Response to Order Section:

1. I have complied with the stipulations in this section. I have mailed the appropriate documentation to the Water Pollution Control Manager and Pollution Control Enforcement and Compliance Section Manager.
2. Based on an onsite visit on June 20, 2007 with Mr. Everett to review of the unnamed tributary a revised CAP detailing the methods to remove accumulated sediment from the unnamed tributary to Little Cove Creek has been developed. It has been mailed to the Water Pollution Control Manager and Pollution Control Enforcement and Compliance Section Manager. Mailed July 5, 2007.
3. I will remove sediment within 30 days after approval of CAP.
4. Remove the temporary road crossing. The road crossing has been in place for about 20 years. It is not on my property. Mr. Everett and Mr. Schmierbach are in agreement with this not being a violation based on our June 21, 2007 meeting.
5. Attend the Fundamentals of Erosion and Sediment Control Workshop. My excavator and I attended the workshop in September, 2006 at the request of TDEC in June 2006. I have mailed our two certificates of completion to the Water Pollution Control Manager and Pollution Control Enforcement and Compliance Section Manager. Mailed July 5, 2007.
6. Pay damages of \$771.17. I am asking for a review of this order.
7. Pay \$6,000 fine. I am asking for a review of this order. I am complying with all other parts of order number 7.

In closing, I would like you to know that I moved up to Tennessee a couple years ago to provide a better atmosphere for my family to grow up in instead of the big city. I am just a small land owner trying to do a little something extra with my life to get ahead. I am not a big land developer nor do I have ill intentions. I care about the environment and do not wish to do any harm. The amount of damage if any I have done is miniscule compared to the other projects I see going on around the city. This little creek is about 6" wide and a 1/2" deep and originates on the property. The amount of flow sometimes almost comes to a stop with the drought we have been having.

I am appealing to have the fine and damages eliminated due to some of the violations not being valid. For the valid violations I don't believe the environment has been severely damaged to warrant the penalty. If you choose to levy any financial penalty I would ask to allow me to use the funds to develop additional vegetation stabilization in the subdivision.

If you have any questions please contact me at (865) 850-4820.

Regards,

  
Jeff Harris